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SENATE JUDICIARY  
EXHIBIT NO. 4  
DATE 1/29/09  
BILL NO. SB 87

SB 87

January 29, 2009

For the record, my name is Scott Crichton, Executive Director of the American Civil Liberties Union of Montana. The ACLU is a non-partisan membership based organization with some 2,000 households in Montana counted among our membership. We are an affiliate of the national ACLU which has some 550,000 members. ACLU's mission is to defend the Constitution and the Bill of Rights.

#### NEW SECTION 1 RAISES SIGNIFICANT DUE PROCESS QUESTIONS.

The restrictions embodied in SB 87, even if its objectives are legitimate, unnecessarily impinge on the sex offenders' basic rights to privacy, to marry, and to make fundamental and basic decisions about how and where they will live and raise their children.

While it may be permissible to restrict an individual's right to reside with one's own children where parental rights have actually been terminated, absent the official termination of parental rights, any blanket restriction on the right of an offender to live with his or her own children – regardless of the nature of the offense and regardless of how much time has elapsed since the offense and regardless of whatever rehabilitation may have occurred – is overbroad. This unnecessary overbreadth is irrational and violates the state constitution's guarantee of substantive due process.

This new section could place the parent of a child who is not a convicted sex offender in the difficult position of choosing to resume residing with an offender or choosing to live with his or her children.

#### SUBSECTION 2 AND 3 ARE VAGUE

Subsection 2 prohibits an offender from making "any visual or audible sexually suggestive or obscene gesture, sound or communication at or to a former victim or member of the victim's immediate family." Are the words "visual or audible sexually suggestive or obscene gesture, sound, or communication" defined? There is probably a wide range of views as to what words and actions would fall under this restriction – would itching ones crotch or giving someone the finger or laughing at a dirty joke be considered a violation of this section? Because the language does not give clear notice of what is prohibited it should be deemed void for vagueness. This language invites substantial opportunities for arbitrary and discriminatory enforcement.

Similar problems exist with regard to Subsection 3 with regard to the vagueness of the term "loiter." If an offender takes his own child (with permission of the custodial parent) to play on the swings at a playground or drops the child off at the day-care facility will that be

deemed loitering? Will a sex offender be unable to assist the other parent of his child because he is barred from even taking the child to the doctor for a pediatric check-up?

The restriction on employment contained in subsection 4 is also unclear. Does it just refer to future employment or does it cover a situation where an offender has held a job for years without incident and the offense they committed did not occur at work and was a lesser sex offense? And is this a permanent restriction or is it for a specific duration?

## ARGUMENTS AGAINST RESIDENCY RESTRICTIONS ON SEX OFFENDERS

In a broader sense, there is little if any evidence that demonstrates that residency restrictions provide effective protection for the community.

Some courts have questioned residency restrictions because they inflict punishment after the end of a sentence and they harshly interfere with an offender's ability to live with his or her family and to live close to where he or she can find work.

Setting aside the constitutional issues, there is no evidence that such restrictions actually have any real effect on recidivism. Minnesota and Colorado have actually studied this issue and concluded that such restrictions have had no effect on recidivism and do not provide any added protection to the community.

There is reason to believe that residency restrictions, in fact, may lead to higher rates of re-offending. Such limitations increase the chance of transiency and homelessness among ex-offenders. This makes it harder for law enforcement to keep track of them and for probation officers to properly supervise them. Residency restrictions make it more difficult for ex-offenders to reside with family members and can force an entire family to move or break apart. Residency restrictions will make it harder for offenders to maintain a job and continue with treatment. Thus, the restrictions could result in greater instability for ex-offenders, a situation that is not going to make the public safer.

In Iowa, the prosecutors' association argued against residency restriction for many of these reasons. It is clear that many in law enforcement do not support such proposals.

In closing, I urge you to weigh all the arguments you've heard today, and give serious consideration to the people who work with these offenders, to understand what is in the best interests of individuals, families and communities. Then weight the constitutional interests of all involved. Once you have done so, I would urge you to vote against SB 87.